

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN
ROBERT N. FELGAR*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

April 26, 1999

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

EDWARD F. KENEHAN
(1960-1978)

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS*
EDWARD S. O'NEILL*
JOHN JOSEPH SMITH

WRITER'S DIRECT

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 99-69
RM-9468
KROX-FM
Giddings/Buda, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of LBJS Broadcasting Company, L.P., licensee of KROX-FM, Giddings, Texas, are an original and four copies of its "Comments" with regard to the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Anne Goodwin Crump

Anne Goodwin Crump
Counsel for LBJS Broadcasting Company, L.P.

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations.
(Giddings and Buda, Texas)

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)
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MM DOCKET NO. 99-69
RM-9478

Directed to: Chief, Allocations Branch

COMMENTS

LBJS Broadcasting Company, L.P. ("LBJS"), licensee of Station KROX-FM, Giddings, Texas, by its attorneys, hereby respectfully submits its Comments with regard to the Commission's *Notice of Proposed Rule Making*, DA 99-446, released March 5, 1999 ("*NPRM*"), in the above-captioned proceeding. Therein, the Commission proposed to amend Section 73.202(b) of its Rules, the Table of Allotments for FM Broadcast Stations, to reallocate Channel 268C1 from Giddings to Buda, Texas, as its first local transmission service. It further proposed that the license for KROX-FM be modified to reflect the new community of license. With respect thereto, the following is submitted:

1. LBJS herein reiterates its support for the proposal set forth in the *NPRM* to delete the allotment of Channel 268C1 at Giddings, to allocate the channel to Buda as its first local transmission service, and to modify the license of KROX-FM to specify the new community of license. The proposed reallocation is in accordance with the Commission's policies as set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Station KROX-FM's

currently licensed facilities place the requisite city grade signal over the community of Buda, and no technical modification of the station will be required in connection with the change in community of license. Further, as shown in LBJS's Petition for Rule Making, the proposed change in community of license will not remove the only local transmission service from Giddings. Finally, the proposed reallocation of Channel 268C1 to Buda is mutually exclusive with the continued operation of Channel 268C1 at Giddings, as the proposed Buda station would operate from KROX-FM's currently licensed site.

2. Should the Commission grant this petition and modify KROX-FM's license accordingly, LBJS will timely file a license modification application to implement the reallocation. The proposed reallocation will serve the public interest and is in full compliance with the Commission's policies relating to the reallocation of a station.

3. The Commission has developed a four-part test to determine whether it should grant a station's petition to amend the Table of Allotments under Section 1.420(i) of the Commission's Rules. First, the proposed new city of license must qualify as a "community." *Georgetown and Garden City, South Carolina*, 12 FCC Rcd 13394, 13395 (1997). Second, "the reallocation must result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures." *Id.* Third, a *Tuck*¹ analysis is required if the proposed community is in a suburban area, and the station's signal covers 50 percent or more of a nearby larger city's Urbanized Area. *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (M.Med. Bur. 1995) (new 70 dBu coverage of 50 percent or more of Urbanized Area raises concerns regarding the validity of local service preference claim.) A *Tuck* analysis requires that

¹ See, *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

the petitioner demonstrate the independence of the suburban community from the nearby larger city. In this instance, however, a *Tuck* analysis is not required, because KROX-FM's service to the Urbanized Area will remain unchanged from that which it currently provides as a Giddings station. KROX-FM will continue to deliver a 70 dBu signal to less than 50 percent of the Austin Urbanized Area. *Killeen and Cedar Park, Texas (NPRM)*, DA 98-1939, released September 25, 1998, at n. 2; *Georgetown and Garden City, South Carolina*, 12 FCC Rcd at 13395.² Fourth, the channel allotment must be in compliance with the Commission's minimum distance separation requirements as set forth in Section 73.207 of the Rules.

4. As set forth in LBJ's Petition for Rule Making, the proposed reallocation meets all parts of the Commission's test for such proposals, and the proposed change in community would benefit the public interest. First, the community of Buda is a substantial community. LBJ demonstrated in the Petition for Rule Making that Buda is a flourishing community with a significant historical background. While the town is within convenient driving distances to larger cities, Buda is clearly its own entity. It has a city government, post office, its own zip code, schools, churches, businesses, cultural activities, and community service organizations. Further, the town has a substantial population which more than tripled between the 1980 Census and the 1990 Census. Obviously, therefore, the community is one which is vibrant and growing. Such a community clearly is in need of its own local aural transmission service.

5. Second, the proposed reallocation will result in a preferential arrangement of allocations. Under the proposed reallocation plan, Buda would receive its first local transmission

² While the *NPRM* notes that the KROX-FM 60 dBu contour will cover a greater than 50 percent area of the Urbanized Area, only the 70 dBu contour is relevant to a *Tuck* analysis.

service. Therefore, the plan triggers priority three set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88, 92 (1990). On the other hand, even with the removal of KROX-FM, Giddings would continue to be served by another station. Furthermore, because LBJS is not proposing to relocate its transmitter site or modify its facilities in any way, KROX-FM licensed to Buda will necessarily continue to provide a city-grade signal to the residents of Giddings.

6. Third, as set forth above, a *Tuck* analysis is not necessary to demonstrate Buda's independence as a community is necessary in this instance. KROX-FM will not provide a city grade signal to the requisite percentage of the Urbanized Area to trigger the need for a *Tuck* analysis. Further, KROX-FM is not moving into the Austin Urbanized Area but is already providing service there. *See, Killeen and Cedar Park, Texas (NPRM)*, DA 98-1939, released September 25, 1998, at n.2; *Georgetown and Garden City, South Carolina*, 12 FCC Rcd at 13395; *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632, 3633 (1995). The purpose of the *Tuck* analysis is to ensure that "rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act...." *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd at 10354. Clearly, if a station is already providing substantial service to a significant portion of an Urbanized Area, a *Tuck* analysis serves no purpose. The Commission has recognized that fact and has indicated that a *Tuck* analysis is unnecessary in such circumstances.

7. Fourth, the proposed reallocation of Channel 268C1 to Buda complies with the Commission's minimum distance separation requirements as contained in Section 73.207 of the Rules. From KROX-FM's currently licensed site, the station is fully spaced to all other stations.

Moreover, from the current KROX-FM transmitter site, the station will be able to provide the requisite city-grade coverage over 100 percent of the town of Buda.

WHEREFORE, in light of the foregoing, LBJs respectfully requests that the Commission amend the FM Table of Allotments to reallocate Channel 268C1 from Giddings to Buda, Texas, and modify the license of KROX-FM accordingly as proposed in the *NPRM*.

Respectfully submitted,

LBJs BROADCASTING COMPANY, L.P.

By:



Howard M. Weiss

Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

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